

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Media Bureau Seeks Comment on)	MB Docket No. 18-227
The Status of Competition in the)	
Marketplace for Delivery of Audio)	
Programming)	

**JOINT REPLY OF MUSICFIRST COALITION
AND FUTURE OF MUSIC COALITION**

Via electronic filing

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I. INTRODUCTION

The musicFIRST Coalition (“musicFIRST”)¹ and Future of Music Coalition (“FMC”)² respectfully submit these reply comments regarding Competition in the Marketplace for Delivery of Audio Programming. The Federal Communications Commission’s (“Commission”) Public Notice (“Public Notice”) seeks commentary and analysis with respect to competition both *among* and *within* different types of audio delivery platforms.³ On September 24, 2018, musicFIRST and FMC filed joint comments in response to the Media Bureau’s Public Notice.⁴ The National Association of Broadcasters (“NAB”)⁵ and Sun Broadcasting, Inc. (“Sun Broadcasting”) also submitted comments in this proceeding.

The Commission and the Third Circuit Court of Appeals have made clear for years, and as recently as 2016, that the applicable public interest standard is what will promote diversity, competition and localism in AM/FM broadcasting as it affects listeners of AM/FM radio, and as it affects potential barriers to entry for those who would like to own and operate AM/FM radio stations in the public interest.⁶

¹ The musicFIRST Coalition is a nonprofit organization comprised of a national coalition of musicians, recording artists, managers, music businesses, and performance rights stakeholders that works to ensure that music creators receive fair compensation for their work on all media platforms. See, **musicFIRST Coal.**, The Coalition, <http://musicfirstcoalition.org/the-coalition/> [<http://bit.ly/2poosym>].

² Future of Music Coalition is a nonprofit organization supporting a musical ecosystem where artists flourish and are compensated fairly and transparently for their work. FMC promotes strategies, policies, technologies and educational initiatives that put artists first while recognizing the role music fans play in shaping the future. **Future of Music Coal., Mission**, <https://futureofmusic.org/mission> [<http://bit.ly/2xuDFkM>].

³ *Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming*, Public Notice, MB Docket No. 18-227, DA 18-761 (July 23, 2018) (“Public Notice”).

⁴ See, *id.*

⁵ See, Comments of National Association of Broadcasters, at 26.

⁶ See, 2014 Quadrennial Regulatory Review - Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Second Report and Order, FCC 16-107, ¶ 273, (2016).

The NAB's comments asserted that the Commission, when making future policy decisions, would serve its public interest obligations by keeping in mind the fact that AM/FM radio as an audio delivery platform faces more competition now than in previous years. The NAB stated: "As the FCC has correctly observed, radio's ability to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability."⁷ That is the wrong standard. The Commission made that observation in 1992, well before the enactment of the Telecommunications Act that caused massive consolidation in AM/FM radio to the detriment of diversity, competition, and localism within local radio markets.⁸ The United States Court of Appeals for the Third Circuit subsequently ruled that the analysis of whether broadcast ownership regulations are "necessary in the public interest" under Section 202(h) of the Telecommunications Act, is a "'plain public interest' standard under which 'necessary' means 'convenient,' 'useful,' or 'helpful,' not 'essential' or 'indispensable.'"⁹ This is the analysis that is required of the Commission in its upcoming Quadrennial Review. According to the Third Circuit and the Commission's 2016 Second Report and Order, there is no "presumption in favor of repealing or modifying the ownership rules."¹⁰

⁷ See, Comments of National Association of Broadcasters at 26, citing *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2769 (1992). Notably, that quote was pulled from a 1992 Report and Order by the Commission regarding *Revision of Radio Rules and Policies*, which was written prior to the Telecommunications Act of 1996 and the massive scale consolidation that followed. When the Commission wrote this in 1992, the AM/FM radio industry was reeling from the burst of a bubble of AM/FM radio station economics. See also, David M. Hunsaker, *Duopoly Wars: Analysis and Case Studies The FCC's Radio Contour Overlap Rule*, 2 **CommLaw Conspectus** 1, 22 (1994), <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1069&context=commlaw> [<http://bit.ly/2OCZFod>] (As of 1992, the burst of this bubble affected radio station valuations across the board, markedly decreased cash flow, and "bankruptcies were common.")

⁸ See, generally, Peter DiCola, *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry*, **Future of Music Coalition** (Dec. 2006), <https://futureofmusic.org/sites/default/files/FMCRadiostudy06.pdf> [<http://bit.ly/2O6HHKy>].

⁹ See, 2014 Quadrennial Regulatory Review, *supra* note 6, at ¶ 6, (2016), citing *Prometheus Radio Project v. FCC*, 652 F.3d 431, 437 (3d Cir. 2011); Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (2008) (Diversity Order and Diversity Third FNPRM).

¹⁰ See, *id.*

The Commission concluded less than two years ago that, as upheld by the Court of Appeals for the Third Circuit, “we find that the Local Radio Ownership Rule continues to be necessary to protect competition, which provides a sufficient ground on which to retain the rule.”

¹¹ The Commission noted that the record failed to demonstrate “that non-broadcast radio programmers [*i.e.*, audio delivery platforms other than AM/FM radio] make programming decisions to respond to competitive conditions in local markets. As the Commission has stated previously, competition among local rivals most benefits consumers and serves the public interest.”¹² The Commission found that “alternative sources of audio programming are not currently meaningful substitutes for broadcast radio stations in local markets.”¹³ Accordingly, the Commission declined to exclude non-broadcast sources of audio programming from the relevant market for the purposes competitive analysis with respect to the Local Radio Ownership Rule. The Commission concluded: “We find that the Local Radio Ownership Rule should continue to focus on promoting competition among broadcast radio stations in local radio listening markets.” Clearly, the standard of what is in the public interest is not the cherry-picked 1992 pre-consolidation note by the Commission that the “public interest, convenience and necessity” is fundamentally premised on “the economic viability of AM/FM radio stations.”

The NAB’s comments analyzed the wide array of audio delivery platforms that now compete with the AM/FM radio community for advertising dollars and time spent listening. Presenting evidence that the AM/FM radio community collectively now faces strong competition among audio delivery services, the NAB argued that the audio delivery marketplace has fragmented in recent years because of the expanding array of choices that advertisers and

¹¹ See, *id.*

¹² See, *id.*, citing 2002 Biennial Regulatory Review- Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, FCC 03-127 (2003).

¹³ See, *id.*

listeners have among audio delivery platforms and services. In conclusion, the NAB argued that because the AM/FM radio community, collectively, is having more difficulty than in prior years competing for advertising dollars with an expanding array of audio delivery platforms, the Commission's upcoming *Communication Marketplace Report* and its regulatory policies toward AM/FM radio "must fully reflect this proliferation of audio content providers and their real world impact on AM and FM radio stations."¹⁴ In other words, the NAB asks the Commission to frame its upcoming regulatory policies in ways that they assert will assist AM/FM radio owners collectively as they try to compete against increasingly popular audio delivery platforms. The NAB also advises the Commission to keep such competition in mind when formulating its upcoming required report to Congress.

While the NAB's initial comments in this proceeding are relatively generalized, in our view they are best read in context alongside the organization's July 15, 2018, letter to the Commission, asking for drastic measures to deregulate AM/FM radio station ownership in the Commission's upcoming Quadrennial Review.¹⁵ Under this suggested proposal, new rules would permit a single entity in the top 75 markets to own up to eight FM stations and an unlimited number of AM stations, with potentially 10 FM stations for participants in the Commission's radio incubator program.¹⁶ The proposal would also allow, in markets smaller than the top 75, no restrictions at all on "the number of FM or AM stations a single entity may own or control."¹⁷

¹⁴ See, Comments of National Association of Broadcasters, at 26-27.

¹⁵ See, Kaplan et. al., *Re: Reforming the Radio Ownership Rules*, (June 15, 2018), http://www.nab.org/documents/newsRoom/pdfs/061518_quadrennial_radio_ownership.pdf [<http://bit.ly/2NuZvuU>](letter from National Association of Broadcasters to Michelle Carey, Esq., Chief, Media Bureau, Federal Communications Commission).

¹⁶ See, *id.*

¹⁷ See, *id.*

To be sure, advertisers and listeners have more choices than in prior years with respect to types of audio delivery platforms, and it is in the public interest for the Commission to work with AM/FM radio broadcasters to find ways for them to locally invest the resources necessary to have diverse, localized AM/FM programming in local communities. But the Commission's public interest obligations require that the Local Radio Station Ownership Caps not be loosened at all in the upcoming Quadrennial Review. We disagree wholeheartedly with the assertions by the NAB and Sun Broadcasting that the Commission should loosen the Local Radio Station Ownership Caps. History has shown that loosening the Local Radio Station Ownership Caps would cause harm to the public interest in diversity, competition, and localism as experienced by listeners of AM/FM radio, including with respect to the diversity of music played on AM/FM radio.¹⁸ Further consolidation at AM/FM radio would also hurt the ability of smaller radio clusters and independent AM/FM stations to compete with larger AM/FM local clusters in shared markets, as was made clear in the Commission's 2016 Second Report and Order regarding the 2014 Quadrennial Review.¹⁹ It is not the mission of the Commission to bail out larger radio clusters at the expense of smaller radio clusters and other competing audio delivery platforms by allowing further consolidation of AM/FM radio station ownership.

¹⁸ See, **Future of Music Coal.**, Radio Station Ownership Consolidation Shown to harm Musicians and the Public, Says FMC Study, (Dec. 13, 2006), [https://www.futureofmusic.org/press/press-releases/radiostation-ownership-consolidation-shown-harm-musicians-and-public-says-fmc-\[http://bit.ly/2IbRrOw\]](https://www.futureofmusic.org/press/press-releases/radiostation-ownership-consolidation-shown-harm-musicians-and-public-says-fmc-[http://bit.ly/2IbRrOw]); see also, **Frontline**, Interview: Jeff Leeds, (Feb. 11, 2004), <https://www.pbs.org/wgbh/pages/frontline/shows/music/interviews/leeds.html> [<https://to.pbs.org/2I9aIQn>]. See generally, Gregory M. Prindle, Note, No Competition: How Radio Consolidation Has Diminished Diversity and Sacrificed Localism, 14 **Fordham Intell. Prop., Media, and Ent. L. J.** 279 (2003).

¹⁹ See, 2014 Quadrennial Regulatory Review, *supra* note 6, at ¶ 8, (2016).

II. FURTHER OWNERSHIP CONSOLIDATION AMONG AM/FM STATIONS IN LOCAL MARKETS WOULD REDUCE COMPETITION AMONG LOCAL BROADCASTERS, IN VIOLATION OF THE COMMISSION'S DUTY TO PROMOTE COMPETITION.

AM/FM radio can compete with the increasing quality and quantity of competing radio delivery platforms if it innovates, invests in local infrastructure, and partners with music creators in a genuine effort to promote diversity, competition, and localism in the local communities in which individual radio stations serve. Indeed quite a few AM/FM radio companies are investing in data and attribution products, building digital channels, embracing smart speakers, and growing radio's share of the podcast audience.²⁰ However, if the Commission were to loosen its current Local Radio Station Ownership Caps in an effort to try to help the largest local AM/FM clusters compete against competing audio delivery platforms, such action would unduly harm the ability of smaller local AM/FM radio station clusters to compete against increasingly large AM/FM radio station clusters in the communities shared by them. Loosening the local radio station caps would not help the entire AM/FM radio community collectively compete against other types of audio delivery platforms, as some comments imply. Rather, loosening the Local Radio Station Ownership Caps would help bolster the competitive abilities of only the largest local AM/FM radio clusters, at the expense of smaller AM/FM radio clusters who compete against both larger local AM/FM clusters and also the vast array of audio delivery platforms.²¹

²⁰ See, e.g., **Inside Radio**, *Radio Show: Is This The Time For Radio To Get Bigger?*, (Sept. 27, 2018), http://www.insideradio.com/free/radio-show-is-this-the-time-for-radio-to-get/article_003647cc-c21d-11e8-89df-337e405f5baf.html [<http://bit.ly/2C3M02K>]; See, e.g., **Inside Radio**, *Update: Entercom's Investment In Digital Media Totals \$9.7M*, (Aug. 7, 2017), http://www.insideradio.com/free/update-entercom-s-investment-in-digital-media-totals-m/article_5a9b1c3e-7b41-11e7-910f-579b7b6c0cd3.html [<http://bit.ly/2PgPcfj>]; see also, **Inside Radio**, *BIA: 10% Boost In Digital Kept Total Radio Revenue Flat in 2017*, (Apr. 6, 2018), http://www.insideradio.com/bia-boost-in-digital-kept-total-radio-revenue-flat-in/article_71a6954c-396f-11e8-9b17-97ce934fb30f.html [<http://bit.ly/2E4JWdw>]; see also, Chris Wygal, *Radio Is Alive and Well in Utica*, **Radio Magazine Online** (Jan. 7, 2016), <https://www.radiomagonline.com/industry/radio-is-alive-and-well-in-utica> [<http://bit.ly/2zZ8bpm>].

²¹ See, e.g., **Radio Ink**, *Does Radio Need More Deregulation (Part 3)?*, (May 17, 2018), <https://radioink.com/2018/05/17/does-radio-need-more-deregulation-part-3/> [<http://bit.ly/2Pk6dW5>], comment by Neuhoof Media CEO Beth Neuhoof when asked by *Radio Ink* about the extent to which some radio entities object to

Music creators care deeply about the competitive abilities of smaller radio clusters, especially independent music-driven AM/FM radio stations, who in our experience, often provide more diverse and local music programming than competing larger local AM/FM radio clusters.²²

The fact that the AM/FM radio community collectively faces increased competition from a growing number of alternative audio delivery platforms is only a part of the relevant competitive picture. AM/FM radio stations also compete amongst themselves in local markets for advertising dollars. Notably, most AM/FM radio stations draw audiences and try to maximize listeners' time spent listening by playing music as their primary source of content.²³ Not all AM/FM regulatory policies affect individual AM/FM competitors in exactly the same way. Loosening the Local Radio Station Ownership Caps would enable those radio entities who enjoy substantial purchasing power to acquire more radio stations in markets where they already have a cluster with the maximum number of stations allowed by the current Local Radio Station Ownership Caps. However, not all radio station owners have such resources at their disposal.

lifting the Local Radio Station Ownership Caps, "I think some smaller, diverse, and perhaps stand-alone interests worry they won't be able to compete in a consolidated marketplace, but I'm hopeful the NAB committee has suggestions that ameliorate that concern." See also, e.g., **Radio Ink**, *Beasley and Renda Team to Fight Purchase*, (Jan. 14, 2016), <https://radioink.com/2016/01/14/beasley-and-renda-team-to-fight-purchase/> [<http://bit.ly/2E35asj>], describing the joint filing of Beasley Media and Renda Broadcasting to prevent local Ft. Myers competitor Sun Broadcasting from purchasing local FM station WLVO, on the theory that Sun Broadcasting's local cluster was already over the numerical limits on local radio station ownership, and that allowing Sun to further increase the number of stations it owned in the market would give Sun an unfair competitive advantage.

²² See generally, Reply Comments of Future of Music Coalition, In the Matter of 2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 06-121.

²³ See, e.g., "Music attracts listeners and keeps them tuned in," says Steve Olsen, President of Audience Research Analysis. Mike Janssen, *There's No One Formula For Radio's Weekends*, **Current** (Sept. 10, 2012), https://current.org/2012/09/theres-no-one-formula-for-radios-weekends/?wallit_nosession=1 [<http://bit.ly/2OKsZJC>]. See, e.g., **The Nielsen Company (US), LLC**, *Audio Today 2018: How America Listens*, (Apr. 2018); see also, **Edison Research**, *Hacking the Commuter Code: What Really Happens When Commuters are Driving*, (April 8, 2016), <https://www.edisonresearch.com/hacking-commuter-code-really-happens-commuters-driving/> [<http://bit.ly/2y7Et0a>] at 5.

As the Commission stated in its 2008 Report and Order regarding its 2006 Quadrennial Review:²⁴

“[E]conomic theory indicates that consolidation permits a firm to achieve economies of scale and scope in operations. This, in turn, provides that firm with the capability to achieve greater efficiencies than smaller firms. Firms that fail to achieve such efficiencies are unlikely to compete successfully.”²⁵

Loosening of Local Radio Station Ownership Caps may help the bottom line of those radio entities who are already relatively large in a given market and who have access to capital with which to acquire more stations there. However, historically, smaller AM/FM clusters lacked such resources and suffered as a result of trying to compete with neighboring clusters with an outsized market shares.²⁶

The Public Notice specifically invited commentary and analysis on “intramodal competition, *i.e.*, competition among providers of the same type, such as terrestrial radio broadcast stations.”²⁷ The NAB and Sun Broadcasting would like the Commission to think that allowing already maxed-out radio clusters to buy more radio properties at the local level would “increase competition” between AM/FM radio and other audio delivery platforms (like streaming

²⁴ See, 2006 Quadrennial Regulatory Review - Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Order on Reconsideration, FCC 07-216, ¶ 113, (2008).

²⁵ See, *id.*

²⁶ See, Sarah Elizabeth Leeper, Note, *The Game of Radiopoly: An Antitrust Perspective of Consolidation in the Radio Industry*, 52 **Maurer Sch. of L.: Ind. U. Fed. Comm. L. J.**, 473, 493 (2000). See also, Andrea Adelson, THE MEDIA BUSINESS; Radio Station Consolidation Threatens Small Operators, **N.Y. Times** (Apr. 19, 1993). See, e.g., comments of Emmis Communications CEO Jeff Smulyan, indicating that in New York City where Emmis owns two FM and 1 AM stations, competitors with larger clusters in that market were able to “leverage their market share to extract a greater percentage of available advertising revenue through packaging a variety of advertising inventory at discounted unit rates.” See, **Inside Radio**, *St. Louis Sale Makes Emmis More Reliant on New York Cluster*, (Feb. 28, 2018), http://www.insideradio.com/free/st-louis-sale-makes-emmismore-reliant-on-new-york/article_18caa4aa-1c54-11e8-89fb-4312d33104be.html [<http://bit.ly/2O2MRaE>].

²⁷ See, *Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming*, Public Notice, MB Docket No. 18-227, DA 18-761 (July 23, 2018) (“Public Notice”), emphasis added.

and satellite radio) such that the Commission would use such deregulatory actions to promote “competition.” But that view completely ignores what happens to competition between radio clusters at the local level whenever Local Radio Station Ownership Caps are loosened. Necessarily, consolidation of AM/FM radio at the local market level is a reduction in the number of competing entities that would otherwise exist in that market. If further deregulation of radio station ownership is allowed to occur, then the same increases in market share that the NAB says will help larger clusters leverage advertising dollars that would otherwise be lost to streaming and satellite radio will be the correlating cause of disadvantages to smaller competing AM/FM clusters in shared local markets.

The comments by the NAB and Sun Broadcasting omitted any discussion of *intramodal* competition. Their comments include neither evidence nor argument about competition *between* AM/FM radio station owners, either on a national basis or as between AM/FM radio station clusters in individual local markets. The NAB did provide evidence that it is difficult for all AM/FM radio in small markets to compete with emerging audio delivery platforms for advertising revenue.²⁸ Consequently, it may be tempting to believe that the NAB adequately argued on behalf of “small” radio broadcasters. However, the NAB’s analysis of small markets focuses exclusively on intermodal competition between: large audio platforms on one hand, and small market AM/FM owners (regardless of size of local cluster, and regardless of the size of corporate owner) on the other hand.

An analysis of intramodal competition *between radio station clusters* in small markets makes clear that smaller AM/FM clusters in small markets already find it difficult to sell advertising revenue when competing against larger local clusters.²⁹ Current Local Radio Station

²⁸ See *generally*, Comments of National Association of Broadcasters.

²⁹ See, e.g., Comments of Emmis Communications CEO Jeff Smulyan, indicating that in New York City where Emmis owns two FM and 1 AM stations, competitors with larger clusters in that market were able to “leverage their market

Ownership Caps provide limits on the extent to which larger clusters can leverage their market share at the expense of smaller clusters.³⁰ Smaller clusters of radio stations compete against larger clusters locally (intramodal competition) and also must simultaneously compete against growing digital and satellite audio delivery platforms (intermodal competition). Decimating the Local Radio Station Ownership Caps in an attempt to prop up larger radio clusters at the expense of smaller radio station clusters would not meet the Commission's mandate to promote diversity, competition, and localism within AM/FM radio. The Commission's mission with respect to AM/FM radio is to promote diversity, competition, and localism, particularly at the local per-market level.³¹ The Commission has no duty to find ways to help the largest of local radio stations become larger so that they alone among local AM/FM broadcasters have more leverage with which to compete both local competitors and outside digital and satellite audio delivery platforms.

Sun Broadcasting's comments argued that increased competition and diversity among audio delivery services require "Reform of the Commission's Local Radio Station Ownership Rules."³² In fact, Sun Broadcasting espoused the view that all limits on local radio ownership should be eradicated.³³ Sun Broadcasting went on to say that it strongly supports "NAB's recent proposal" as described in the Introduction portion of this document. Sun Broadcasting may appear at first glance to be a small broadcaster since it owns only five radio stations

share to extract a greater percentage of available advertising revenue through packaging a variety of advertising inventory at discounted unit rates." See, **Inside Radio**, *supra* note 26.

³⁰See, 2014 Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Second Report and Order, FCC 16-107, ¶ 96 and note 256, (2016).

³¹ See, *id.* At ¶ 245, (2016).

³² Comments of Local Community Broadcasters at 5.

³³ See, *id.* at 5.

nationwide.³⁴ However, all of its AM/FM properties are in one market: Ft. Myers-Naples, Florida.³⁵ Sun Broadcasting is maxed out at five radio stations in Ft. Myers (4 FM and 1 AM),³⁶ so they enjoy substantial market share there.

Since Sun Broadcasting enjoys a substantial presence in Ft. Myers-Naples and filed comments specifically asking the Commission to significantly loosen the Local Radio Station Ownership Caps, a case study of the top commercial radio stations in that market is worth reviewing. Trade publication *Radio Online* published Nielsen ratings for the top 22 radio stations in the Ft. Myers-Naples from Summer 2017 through Spring 2018,³⁷ that chart is attached hereto as Attachment A.³⁸ Each and every one of the stations identified as being in the top 22 in the marketplace as of Spring 2018,³⁹ was owned by one of five companies.⁴⁰ It's clear from Sun Broadcasting's comments that it wants the Local Radio Station Ownership Caps lifted so that it can purchase more radio stations in Ft. Myers-Naples where it is already maxed out under the current FCC numerical limits. If Sun Broadcasting were to buy stations from one or more of the other few radio owners in Ft. Myers - Naples, its market share there would increase relative to the other local broadcasters, making it more challenging for remaining commercial stations in the market to compete for advertising dollars. If the number of entities that own commercial radio stations in Ft. Myers - Naples were to decrease from five to four or, three, that

³⁴ See, **Sun Broadcasting Inc.**, <http://sbroadcast.com> [<http://bit.ly/2yfhcc1>].

³⁵ See, e.g., **Radio Ink**, *Beasley and Renda Team to Fight Purchase*, *supra* note 21.

³⁶ See, **Sun Broadcasting Inc.**, *supra* note 34.

³⁷ See, **Radio Online**, #57 *Ft. Myers-Naples-Marco Island FL: Spring 2018 Nielsen Audio Quarterly Report 12+ Mon-Sun, 6a-12mid*, (Updated: 07-23-18), <https://ratings.radio-online.com/cgi-bin/rol.exe/arb515> [<http://bit.ly/2QuyIWv>].

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See, *id.*

would literally be a reduction in competition within the entire AM/FM radio marketplace (at least of all stations that have an audience share of at least 0.2)⁴¹ in Ft. Myers. Moreover, because all of the viable commercial radio stations in the marketplace are already taken by the five companies that are trying to maximize their own holdings and economies of scale, there would be steep barriers to entry for other small business entities to try to enter the AM/FM radio market in Ft. Myers.⁴² The Commission has an obligation to promote competition in AM/FM radio, rather than facilitate the reduction of competition in AM/FM radio.

While the NAB purports to speak on behalf of the entire AM/FM radio community, in fact the radio community is not at all united behind the deregulatory plan that the NAB has proposed. Our initial comments made note of this fact, and we won't elaborate here except to say that for reasons that vary from one another, iHeartMedia, the National Association of Black Owned Broadcasters, and the Multicultural Media, Telecom, and Internet Council are all opposed to the NAB's proposed plan to decimate the Local Radio Station Ownership Caps.⁴³

Many owners and operators of AM/FM radio stations disagree strongly with the NAB, arguing that Local Radio Station Ownership Caps should be not loosened.⁴⁴ Key expert AM/FM radio executives, from companies huge,⁴⁵ medium⁴⁶ and tiny,⁴⁷ have stated on record that the

⁴¹ See, *id.*

⁴² See, e.g., 2002 Biennial Regulatory Review- Review of the Commission's Broadcasting Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd. 13620 at 13730-31, para. 288 (finding that in radio markets, "barriers to entry are high because virtually all available radio spectrum has been licensed" and that the "closed entry nature of radio suggests that the extent of capacity that is available for new entry plays a significant role in determining whether market power can develop in radio broadcasting"). See, e.g., Comments of Black Citizens for a Fair Media, In the Matter of Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197, <https://ecfsapi.fcc.gov/file/1771340001.pdf> [<http://bit.ly/2zYs0ND>], <https://ecfsapi.fcc.gov/file/1771340002.pdf> [<http://bit.ly/2y4eyXe>].

⁴³ See, **Inside Radio**, *iHeart Explains Why It Opposes NAB's Deregulation Proposal*, (June 26, 2018), http://www.insideradio.com/iheart-explains-why-it-opposes-nab-s-deregulation-proposal/article_6671ede2-7976-11e8-8f8e-4b6c87d918e1.html [<http://bit.ly/2PhdVAe>].

⁴⁴ See, *id.*

⁴⁵ Huge: iHeart Media: See, **Inside Radio**, *supra* note 43.

Local Radio Station Ownership caps should not be loosened because doing so may harm the competitive landscape between AM/FM radio stations and clusters, create barriers to entry for independent broadcasters, and/or reduce listeners' choices when seeking diverse and sources for information and music.⁴⁸ Independent broadcasting execs Glenn Cherry and Ronald Gordon, who have extensive experience managing AM/FM radio stations in the Southeast that primarily serve minority audiences, recently lamented that a majority faction of the NAB board had voted to ask the FCC to raise the Local Radio Station Caps and AM/FM Subcaps, on the theory that this would the AM/FM radio industry collectively compete with tech giants and competing audio services.⁴⁹ But according to Cherry and Gordon, doing so would be a grave mistake. In their experience, this specific type of broadcast deregulation:

“Destroys competition and diversity of voices, and limits opportunity for small businesses and minority and women ownership. In radio, getting rid of the caps and the FM subcap would drive out the “mom and pop” owner/operators who are the lifeblood of our industry. The minorities and women who broadcast to those hungriest for radio. The foreign language and religious broadcasters. The AM specialists we rely on for local news and information, especially during storms. The folk who embody hyper-local service: our industry’s strongest response as we compete against newer, globally programmed, flavor-of-the-day technologies.”⁵⁰

⁴⁶ Medium: See, Comments of Ginny Morris, CEO of Hubbard Media at NAB Radio Show September 27, 2018, See, **Inside Radio**, *Radio Show: Is This The Time For Radio To Get Bigger?*, *supra* note 20; see, **Hubbard Radio**, *Our Markets*, <http://corporate.hubbardradio.com/markets/> [<http://bit.ly/2C0hYL9>].

⁴⁷ Tiny: See, Cherry & Gordon, *The Three Types of Radio Deregulation*, **Radio World** (July 25, 2018), <https://www.radioworld.com/columns-and-views/the-three-types-of-radio-deregulation> [<http://bit.ly/2DZnHpr>]. **Radio Ink**, *Why iHeartMedia Opposes More Deregulation*, (June 26, 2018), <https://radioink.com/2018/06/26/why-iheartmedia-opposes-more-deregulation/> [<http://bit.ly/2xHn6IX>].

⁴⁸ See, *id.*

⁴⁹ See, *id.*

⁵⁰ *Id.*

Cherry and Gordon point out that while 38 percent of our nation is comprised of people of color, the NAB board's deregulatory proposal merely "pays lip-service to how its deregulation plan would affect these communities and their ability to participate in the economics of the public airwaves." Specifically, the "anemic incubator proposal completely dis-incentivizes incubation opportunities in the vast majority of markets."⁵¹ Cherry and Gordon argue that the NAB Board's proposal, if enacted, would decimate values of AM radio stations and cause substantial FM consolidation such that "it's easy to see how the NAB board proposal would dramatically accelerate the already dismal, downward spiraling of broadcast ownership by small operators and people of color."⁵²

It bears repeating that the results of a 2018 reader survey by radio trade publication *Radio Ink* showed that an astounding 80% of respondents said they were opposed to deregulation.⁵³ On September 27, 2018 at the NAB Radio Show, a panel of AM/FM radio company CEOs debated about the potential benefits of further deregulation of AM/FM radio station ownership. Ginny Morris, CEO of Hubbard Media,⁵⁴ which owns AM/FM clusters in eight markets,⁵⁵ stated, "The industry is still trying to work its way out of the 'we need to get bigger at any cost' mentality of the last time, and I would hate to see us fall into the same trap if the FCC rules on relaxing media ownership rules." Meanwhile Townsquare Media co-CEO Dhruv Prasad stated that his company was in favor of further deregulation,⁵⁶ but he nevertheless told the audience that if the Commission does not loosen the Local Radio Station Ownership Caps, "he

⁵¹ See, *id.*

⁵² See, *id.*

⁵³ See, **Inside Radio**, *supra* note 43.

⁵⁴ See, **Inside Radio**, *Radio Show: Is This The Time For Radio To Get Bigger?*, *supra* note 20.

⁵⁵ See, **Hubbard Radio**, *supra* note 46.

⁵⁶ See, **Inside Radio**, *Radio Show: Is This The Time For Radio To Get Bigger?*, *supra* note 20.

doesn't think it will be a 'disaster scenario' for the industry," since much focus is already being paid to show radio's effectiveness to advertisers. "There are plenty of growth catalysts and stable days ahead for radio for a variety of reasons," he said. "So if we don't get media ownership rule changes, the industry isn't going away—far from it. There are brighter days ahead of us."⁵⁷

Only two years ago, in 2016, the Commission resolved that portion of the 2014 Quadrennial Review that dealt with AM/FM radio by ordering that the current Local Radio Station Ownership Caps remain necessary in the public interest in order to promote competition.⁵⁸ In its 2016 Second Report and Order, the Commission also rightly concluded that the current Local Radio Station Ownership Caps promote the existence of a 'sufficient number of independent radio voices and by preserving a market structure that facilitates and encourages new entry into the local media market.'⁵⁹ The Commission continued:

"Similarly, we find that a competitive local radio market helps to promote localism, as a competitive marketplace tends to lead to the selection of programming that is responsive to the needs and interests of the local community. Also, we find that the Local Radio Ownership Rule is consistent with our goal of promoting minority and female ownership of broadcast television stations. We find that these benefits outweigh any burdens that may result from retaining the rule without modification."⁶⁰

⁵⁷ See, *id.*

⁵⁸ See, 2014 Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Second Report and Order, FCC 16-107, ¶ 82, (2016).

⁵⁹ See, *id.*

⁶⁰ See, *id.*

III. CONCLUSION

We strongly agree with the Commission's 2016 Second Report and Order, and we ask the present Commission to refrain from further deregulation of radio station ownership in its upcoming Quadrennial Review. In particular, we view the maintenance of the specific numerical limits and AM/FM subcaps inherent in the current Local Radio Station Ownership Caps as being necessary in the public interest in diversity, competition and localism in local AM/FM radio markets as required by law.

While listeners and advertisers now have more choices than in past years among varied audio delivery platforms, further deregulating AM/FM radio station ownership is not the appropriate action for the Commission to take since doing so would harm the public interest. Loosening the Local Radio Station Ownership Caps would harm smaller AM/FM clusters' abilities to compete with larger AM/FM clusters in their shared communities. We as music creators strongly value smaller radio station clusters and independent broadcast radio stations throughout the country. We want all sizes of AM/FM radio station clusters to thrive on the basis of merit. We are rooting for all AM/FM radio clusters and independent stations including those smaller local clusters that would be harmed by being forced to compete for advertising dollars with relatively massive AM/FM clusters wielding enormous local market share.

musicFIRST and FMC respectfully request that in setting all policies affecting AM/FM radio, and in making its recommendations to Congress, the Commission take actions that will assist, rather than hinder, smaller radio station owners and operators who struggle to compete with large clusters of AM/FM radio stations in their local communities.

Respectfully Submitted,

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ATTACHMENT A

#57 Ft. Myers-Naples-Marco Island FL

Spring 2018 Nielsen Audio Quarterly Report 12+ Mon-Sun, 6a-12mid (Updated: 07-23-18)

12+ Population: 984,300 (Black: 74,100) (Hispanic: 202,600)
 Surveyed: Continuously -- Next Update: 10-10-2018

Station	Sum 17	Fall 17	Win 18	Spr 18	Format	Owner
WWGR-FM	5.5	4.6	4.9	6.6	Country	Renda Broadcasting
WARO-FM	3.7	3.9	4.0	5.2	Classic Rock	Sun Broadcasting
WJPT-FM	5.0	6.4	4.5	5.1	AC	Beasley Media
WJGO-FM	3.6	3.8	3.5	4.3	Adult Hits	Renda Broadcasting
WXKB-FM	4.2	4.4	5.2	4.2	CHR	Beasley Media
WFSX-FM	7.6	7.2	6.5	4.1	News	Sun Broadcasting
WINK-FM	3.7	3.6	3.3	3.5	AC	Fort Myers Broadcasting Company
WBTT-FM	3.5	3.6	3.7	3.4	Rhythmic CHR	iHeartMedia
WCKT-FM	3.2	4.1	3.1	3.2	Country	iHeartMedia
WOLZ-FM	2.7	2.5	2.1	2.7	Classic Hits	iHeartMedia
WTLQ-FM	3.5	3.8	3.8	2.7	Spanish	Fort Myers Broadcasting Company

WFFY-FM	1.2	1.9	3.6	2.3	Rhythmic CHR	Sun Broadcasting
WRXK-FM	2.8	2.1	1.9	2.2	Active Rock	Beasley Media
WZJZ-FM	2.1	2.3	1.5	2.1	Hot AC	iHeartMedia
WXNX-FM	2.7	2.2	2.2	1.9	Alternative	Sun Broadcasting
WSGL-FM	1.6	1.8	1.7	1.4	Hot AC	Renda Broadcasting
WRXK-FM-HD2	1.5	2.0	1.3	1.1	Active Rock	Beasley Media Group
WWCN-FM	1.4	1.3	1.2	1.0	All Sports	Beasley Media
WFSX-AM	N/A	0.4	N/A	0.9	All Sports	Sun Broadcasting
WGUF-FM	0.5	N/A	N/A	0.4	News	Renda Broadcasting
WJBX-AM	N/A	0.4	N/A	0.4	News	Beasley Media
WAXA-AM	0.5	N/A	N/A	0.2	Tropical	Fort Myers Broadcasting Company

Totals are Persons 12+, Mon-Sun, 6am-midnight

This profile contains an quarter hour rating (AQH) share of persons, ages 12+, Monday through Sunday in the Metro Survey Area.

Radio Online, #57 Ft. Myers-Naples-Marco Island FL: Spring 2018 Nielsen Audio Quarterly Report 12+ Mon-Sun, 6a-12mid, (Updated: 07-23-18), <https://ratings.radio-online.com/cgi-bin/rol.exe/arb515> [<http://bit.ly/2QuyIWVj>].